

United States District Court, Northern District of Illinois

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| Name of Assigned Judge or Magistrate Judge | James B. Moran | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 98 C 699 | DATE | 7/20/2001 |
| CASE TITLE | Kenneth Bockwoldt, Jr. Vs. Officer Daniel J. Cheney | | |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Defendant's motions in limine as to 27-1, 27-6, are granted in part and denied in part. Defendant's motions in limine as 27-2, 27-3, 27-4, 27-7, and 27-8 are denied. Defendant's motion in limine as to 27-5 is granted. Plaintiff's motions in limine as to 28-1, 28-2, and 28-3 are denied. Plaintiff's motions in limine as to 28-4 and 28-5 are granted. Plaintiff's motion in limine as to 28-6 is granted in part and denied in part. Status hearing set for August 8, 2001 at 9:45am. Trial reset to August 29, 2001 at 10:00am. Status hearing set for 8/23/01 at 9:45am. is stricken.
- (11) ☒ [For further detail see order attached to the original minute order.]

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| <input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail A 450 form. <input type="checkbox"/> Copy to judge/magistrate judge. | courtroom deputy's initials WAH | ED-7 FILED FOR DOCKETING 01 JUL 20 PM 4:20 | number of notices | Document Number 39 |
| | | | JUL 23 2001 date docketed | |
| | | | [Signature] docketing deputy initials | |
| | | | date mailed notice | |
| | | | mailing deputy initials | |
| Date/time received in central Clerk's Office | | | | |

4. Plaintiff moves to exclude any evidence that defendant could lose his job if found guilty. That motion is granted. Such evidence would open up a wholly different disputed issue of, at best, marginal relevancy. This ruling might be subject to reconsideration if plaintiff sought to emphasize salary as a basis for a punitive damages amount and if defendant could make a reasonable showing that his job was forfeit.

5. Plaintiff moves to exclude testimony or evidence of prior or subsequent injuries. We are not advised whether or not there is any such evidence. We cannot determine whether there is any relevant evidence without knowing more. For example, if medical records established that plaintiff had herniated disks prior to September 1997, that would appear to be relevant evidence; that he fractured his arm when he was seven, clearly is not. But apparently there is no such relevant evidence, as none has turned up yet, and discovery is closed.

6. Plaintiff moves to exclude any reference to plaintiff being intoxicated. We agree that there appears to be no basis for testimony that plaintiff was legally intoxicated. Witnesses may, however, testify to their observations of plaintiff at the time, what they smelled and saw.

7. Later motions in limine will be entertained for good cause shown.

Defendant's motions:

1. and 7. Defendant moves to dismiss evidence of plaintiff's Social Security disability determination. That determination is not conclusive of plaintiff's condition, but it is evidence the jury may consider. *See Lawson v. CSX Transportation, Inc.*, 245 F.3d 916, 927 (7th Cir. 2001). The references to cause, however, should be redacted.

2. and 5. Dr. Elmes' SSA evaluation would appear to be admissible pursuant to Rules 803(4) and (6) of the Federal Rules of Evidence. A report prepared for this litigation, however, is not admissible, although it may well be that Dr. Elmes referred to it in his deposition or will

refer to it in his testimony.


3. Defendant moves to exclude the disposition of the criminal charges. That is denied. Although not strictly relevant, that information comes in to complete the scenario for the jury. They should not be distracted by speculating about the outcome of the charges.

4. Defendant moves to exclude Fastway employment records. That motion is denied. They are necessary, or at least helpful, to prove up wage loss claims.

6. Defendant moves to exclude plaintiff's witnesses 10-14 on the ground that they are either recordkeepers or medical treaters, and the records speak for themselves. The motion is granted with respect to recordkeepers to the extent that they are being called solely to provide a foundation for the records and defendant is prepared to stipulate to that foundation. Treaters, however, of course can testify, and so can recordkeepers if their testimony is necessary to explain records when their meaning is not fully apparent.

7. Defendant moves for admission of evidence of plaintiff's "criminal history where it involves ... propensity to tell the truth." In the absence of knowing of the specific evidence to which defendant refers, we deny the motion.

July 20, 2001.


JAMES B. MORAN
Senior Judge, U. S. District Court